

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 765 of 1996

with

SPECIAL CIVIL APPLICATION NO.10718/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DIVISIONAL CONTROLLER

G S R T C

Versus

SHANKERGER CHANCHALGER GUSAI

Appearance:

MR HARDIK C RAWAL for Petitioner()in SCA No.765/96

Mr.H.K.Rathod for respondent ()

Mr.H.K.Rathod for petitioner ()

Mr.Hardik C.Rawal for respondent()in SCA 10718/95

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/09/96

ORAL(COMMON)JUDGEMENT

1.Rule. Mr.H.K.Rathod and Mr.Hardik Rawal appears on behalf of respondents in respective petitions and waives service of rule. With the consent of learned advoctes appearing for parties, since both the matters are

directed against same judgment and award, they are heard together and finally decided by this common judgment.

2. These two petitions are directed against the judgment and award passed by the labour court, Rajkot in Reference (LCR) No.1034/87. The GSRTC has filed the petition challenging the award of the labour court, dated 22.8.95 whereby the labour court has ordered reinstatement of watchman and has further directed the corporation to pay 10% of the salary from the date the reference was filed in the labour court. The workman has challenged the very award on the ground that he has been only awarded 10% of backwages from the date of reference despite the fact that it was found by the labour court that noncontinuance of service was in breach of section 25F of I.D.Act, 1947.

3. Mr.H.K.Rathod appearing for the workman has mainly submitted that even if the factor of making reference very late is taken into account the labour court could have granted full backwages atleast from the date of reference till the reinstatement of the workman. In his submission, this would have been the just and proper award.

4. Mr.Hardik Raval appearing on behalf of the GSRTC has specifically contended that the documentary evidence which was in fact produced by the corporation and which would partially factually disprove the case of the workman is not even considered by the labour court and nonconsideration of such documentary evidence has vitiated the finding reached by the labour court. In his submission in fact a reliever watchman was entitled to wages of Rs.9.83ps. per day while the petitioner has claimed that he was being paid Rs.15.19ps. per day as a reliever watchman. The very foundation of the case of the workman is thus based on incorrect facts. Secondly, he submitted that from whatever record which was available with the corporation the corporation has by producing available pay slip and muster card established that the workman has not worked for a period of 240 days in any year and therefore the relevant evidence having not been considered the workman was not even entitled to reinstatement in service. The workman has also produced at Exh.16 the muster card and pay slips for long period starting from 9/72 to 5/82 wherefrom he has tried to prove that he has atleast completed 240 days service in an year and his services therefore could not have been terminated without following the provisions of section 25F of the said Act.

5. Now, if this court turns to the award of the labour court, it is clear that the workman has stated that he was working as reliever watchman at the wages of Rs.15.19ps and that his services have been terminated by an oral order, dated 11.5.82. The labour court has found that the workman by his deposition at Exh.75 has proved that he has worked by producing muster card and pay slips for the relevant period. On the other hand, in the deposition of the officer of the GSRTC at Exh.81 all pay slips and muster cards for the entire period were not available with the corporation and that whatever muster cards and pay slips were available have been produced by them. The labour court has therefore inferred that in fact it is the statutory obligation of the employer to produce preliminary evidence which is in his position to disprove the case put forward by the workman and in the present case the employer has failed to produce such evidence. The labour court has therefore found that from the evidence produced by the workman it was established that he has worked for 240 days in an year and was illegally terminated in violation of Section 25F of the said Act.

6. While awarding backwages also the labour court has kept in mind very important fact that reference was made late and for such inaction on the part of the workmen he can not be benefited. Therefore, for the said period the labour court has not awarded any backwages and has simply awarded only 10% of the backwages from the date of the reference keeping in mind that the workman was partially gainfully employed and was earning approximately Rs.250/-p.m. Taking all these factors into consideration the labour court has reasonably slashed down the backwages only to 10% from the date of reference. Such slashing down of backwages by the labour court can not be said to be unreasonable or illegal especially when the reference was made very late and for such omission on the workman he can not be benefitted.

7. In view of the aforesaid discussion this court is of the opinion that the judgment and award of the labour court, Rajkot is not impeachable and can not be said to suffering from any error of law apparent on the face of record or any error of jurisdiction which would call for interference of this court.

8. In view of the aforesaid, the award passed by the labour court is confirmed. In the result, rule is discharged in each petition as the award passed by the labour court is fully confirmed and the corporation is directed to reinstate the workman within a period of four

weeks from the date of receipt of writ of this court. No costs. Direct service is permitted.

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